IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16946 of 2003

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MANIBEN ABHABHAI BARIYA - Petitioner(s)
Versus
UNION OF INDIA - Respondent(s)

==========

Appearance :
MR PH PATHAK for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
MS ARCHANA U AMIN for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 26/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Heard learned Counsel for the parties - Shri Parmar for the petitioner and Ms. Archana Amin for the respondent.

Original Application No.600 of 1994, filed by the petitioner – Applicant was allowed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short “the Tribunal”). For execution of the same, Miscellaneous application was filed which was decided against the Applicant by the learned Tribunal by its Judgment and order dated 10.4.2002 (Annexure:D) in absence of the Advocate of the Applicant, after hearing the learned Counsel for the respondent. Review Application filed against the said order was also dismissed by the learned Tribunal by its impugned Judgment and order dated 27.2.2003. Hence, this petition.

Several contentions on merit were raised by the learned Counsel Shri Parmar, but we are not required to go in to it as, in our considered opinion, the first contention of Shri Parmar that the learned Tribunal ought not to have decided their Execution Application in absence of their Advocate is well founded. We find from the impugned order at Annexure:D dated 10.4.2002 passed by the learned Tribunal that when the matter was called out the learned Advocate Shri K.K.Shah for the applicant was not present and on his behalf request was made by one Shri Bhatt to keep the matter back and the matter was kept back by the learned Tribunal for about two

hours, but when Shri Shah failed to turn up, the Tribunal proceeded to hear and decide the matter on merit after hearing the learned Counsel for the respondents. It would have been better if the matter was adjourned when the counsel was not present. In any case, the Tribunal could not have decided the matter on merit in absence of the counsel. At the most the Tribunal could have dismissed it for default. Hence, on this ground alone, the impugned order dated 10.4.2002 (Annexure:D) is required to be quashed. Once that order is quashed then the subsequent order dated 27.2.2003, passed by the learned Tribunal, in Review Application (ANNEXURE:F) is also required to be quashed.

Accordingly, this petition is allowed by setting aside the impugned decisions dated 10.4.2002 (Annexure:D) and 27.2.2003 (Annexure:F) and the matter is remanded to the learned Tribunal to hear and decide their Miscellaneous Application for Execution filed in OA No.600 of 1994 on merit and in accordance with law, after extending an opportunity of hearing to the learned Counsel for the parties.

Rule made absolute to the aforesaid extent. No order as to costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

sas